

AG Contract No.: KR05-0335TRN  
ADOT ECS File No.: JPA 05-023  
Project No.: HRF-KRN-0-814  
Project: Roadway Reconstruction on Upton Dr.  
Section: Danbury to Ivanhoe  
TRACS No.: HF114 01D / 01C  
Budget Source Item No.: N/A  
HURF Exchange Program

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF KEARNY

THIS AGREEMENT is entered into 6th May, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF KEARNY, ARIZONA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1 The State is empowered by Arizona Revised Statutes §§ 28-401 and 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2 The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3 The State has approved the exchange of \$37,500.00 Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the Town for the **design** of roadway reconstruction on Upton Drive from Danbury Road to Ivanhoe Road, and such funds will be repaid to the State by withholding from CENTRAL ARIZONA ASSOCIATION OF GOVERNMENTS (CAAG) federal funds and the obligation authority for federal funds in the amount of \$42,528.00 in Fiscal Year 2005.

4 The State has approved the exchange of \$212,500.00 Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the Town for **roadway reconstruction** on Upton Drive from Danbury Road to Ivanhoe Road, and such funds will be repaid to the State by withholding from CENTRAL ARIZONA ASSOCIATION OF GOVERNMENTS (CAAG) federal funds and the obligation authority for federal funds in the amount of \$240,994.00 in Fiscal Year 2005.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27499  
Filed with the Secretary of State  
Date Filed: 05/06/05

Genie K. Brewer  
Secretary of State

By: Jimmy D. Greenwald

## **II. SCOPE OF WORK**

### **1. The Town shall:**

a. Provide design plans, specifications and such other contract documents and services required for bidding and roadway reconstruction.

b. Be responsible for any additional funds required for design of the project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulation.

c. Invoice the State in an amount not to exceed \$37,500.00 for the reimbursement of the design costs.

d. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

e. Invoice the State for thirty percent of the \$212,500.00 project construction cost for Fiscal Year 2005, upon award of the construction project.

f. Invoice the State for thirty percent of the \$212,500.00 project construction cost for Fiscal Year 2005, at the thirty percent and sixty percent project construction completion stages.

g. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

h. Invoice the State for the remaining ten percent of the \$212,500.00 project construction cost for Fiscal Year 2005 at the one hundred percent project construction completion stage, after the Town, CAAG, and the State (ADOT) representatives have completed final project review.

### **2. The State shall:**

a. Within 30 days after receipt and approval of a design invoice, reimburse the Town for an amount not to exceed \$37,500.00 for design costs.

b. Withhold from CAAG, federal funds and the obligation authority of federal funds in an amount of \$42,528.00 in Fiscal Year 2005 for design costs.

c. Within 30 days after receipt of an invoice and a letter confirming the construction project has been awarded, advance the Town thirty percent of the HURF funds.

d. Within 30 days after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the Town HURF funds in the amount of thirty percent at each invoiced stage for construction.

e. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the Town HURF funds in the final ten percent amount of the \$212,500.00 for the roadway reconstruction in Fiscal Year 2005.

f. Withhold from CAAG, federal funds and the obligation authority of federal funds in an amount of \$240,994.00 in Fiscal Year 2005 for roadway reconstruction.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and Arizona Department of Transportation (ADOT) as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the Town, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424

Town of Kearny  
Town Manager  
912-C Tilbury Road  
Kearny, AZ 85237

10. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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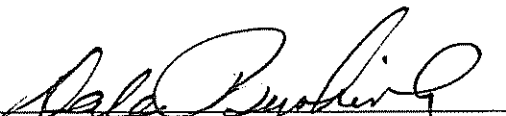
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF KEARNY

STATE OF ARIZONA

Department of Transportation

By   
DEBRA SOMMERS  
Mayor

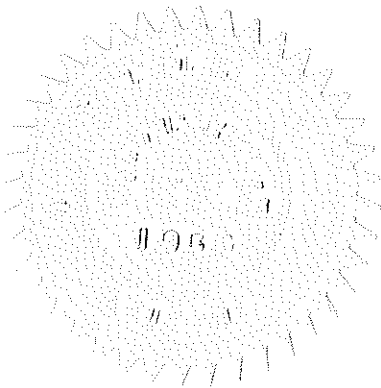
By   
DALE BUSKIRK, Division Director  
Transportation Planning Division

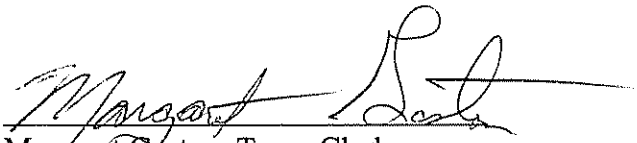
ATTEST

By   
MARGARET GASTON  
Town Clerk

I, the undersigned, Margaret Gaston, being the duly appointed and qualified Town Clerk of the Town of Kearny, Arizona, certify that the foregoing Resolution No. 05-548 is a true, correct and accurate copy of Resolution No. 05-548, passed and adopted at a regular meeting of the Kearny Town Council, held on February 14, 2005, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 25<sup>th</sup> day of April, 2005.



  
Margaret Gaston, Town Clerk

**RESOLUTION NO. 05-548**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA TO IMPLEMENT A HURF EXCHANGE PROGRAM FOR UPTON DRIVE CONSTRUCTION.**

**WHEREAS,** The Town of Kearny is empowered by Arizona Revised Statutes to enter into an intergovernmental agreement, and

**WHEREAS,** The Arizona Department of Transportation has established the HURF Exchange Program to finance road improvements, and

**WHEREAS,** The Town of Kearny plans a street improvement project on Upton Drive.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL, OF THE TOWN OF KEARNY, ARIZONA:**

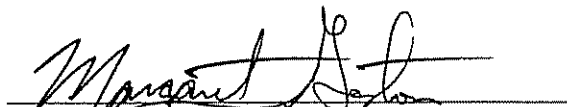
Section 1: The Mayor and Town Manager acting on behalf of the Town of Kearny are hereby authorized to negotiate, enter into, execute and deliver the intergovernmental agreement with the Arizona Department of Transportation implementing the HURF Exchange Program for the Upton Drive project.

Section 2: The resolution shall take effect immediately upon its adoption and approval.


**PASSED AND ADOPTED BY THE** Mayor and Town Council of the Town of Kearny, Arizona, this 14<sup>th</sup> day of February, 2005.

  
Mayor

ATTEST:

  
Town Clerk, Margaret Gaston

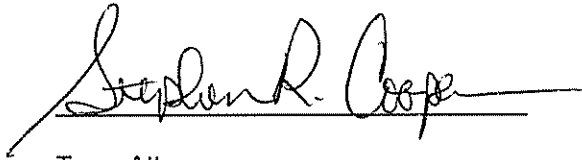
APPROVED AS TO FORM:

  
Town Attorney, Steve Cooper

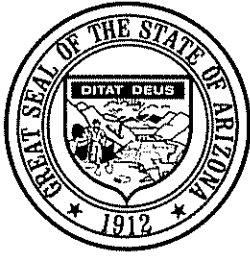
APPROVAL OF THE TOWN OF KEARNY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF KEARNY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

A handwritten signature in black ink, appearing to read "Stephen R. Cooper", is written over a horizontal line.

Town Attorney



**ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION**

**MEMORANDUM**

Jeffrey T. Murray  
Assistant Attorney General

Direct: (602) 542-8859  
Fax: (602) 542-3646

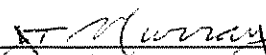
**INTERGOVERNMENTAL AGREEMENT  
DETERMINATION**

A.G. Contract No. KR05-0335TRN (**JPA 05-023**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED May 4<sup>th</sup>, 2005.

TERRY GODDARD  
Attorney General

  
\_\_\_\_\_  
JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section

JTM:dgr  
Attachment  
903527